

AMENDED IN ASSEMBLY APRIL 15, 1998
AMENDED IN ASSEMBLY APRIL 2, 1998
AMENDED IN ASSEMBLY MARCH 12, 1998
AMENDED IN ASSEMBLY MARCH 2, 1998
AMENDED IN ASSEMBLY FEBRUARY 6, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1631

Introduced by Assembly Member Sweeney
(Coauthors: Assembly Members Cardoza, Gallegos,
Granlund, Honda, Lempert, Margett, Martinez, Perata,
Strom-Martin, and Villaraigosa)
(Coauthors: Senators Costa and Watson)

January 5, 1998

An act to add Section 524 to the Evidence Code, to add Sections 38, 7062, 18404, 18405, and 19382.5 to the Revenue and Taxation Code, and to amend Sections 1113 ~~and 1129~~, *1129*, *and 1178* of the Unemployment Insurance Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1631, as amended, Sweeney. Tax collection: burden of proof.

Existing law provides that the burden of proof for specified issues in court proceedings for purposes of various tax laws rests with the taxpayer.

This bill would state the intent of the Legislature to conform state law to federal law relative to the shifting of the burden or proof in connection with taxes paid by California income tax taxpayers. It would provide for purposes of the taxes administered by the State Board of Equalization or the Franchise Tax Board, that each board, as applicable, shall have the burden of proof in sustaining penalties for intent to evade or fraud, as provided, in any court or administrative tax proceeding or in any evaluation of tax compliance, as specified, but only if certain conditions are met. It would also require the Franchise Tax Board to, at the request of a taxpayer, as specified, to send the taxpayer an itemized receipt showing a proportionate allocation of the taxpayer's total tax payments among the major expenditure categories, as provided.

The State Board of Equalization administers various taxes and fees imposed by the state. Existing law generally prohibits any suit or proceeding in any court in connection with those taxes and fees unless a claim for refund or credit has been filed, as provided.

This bill would permit, in the case of any tax or fee administered by the board, a claimant to maintain a suit or proceeding in any court upon payment of a portion of the amount in dispute and the filing of a claim for refund or credit. In the case of a fee, the amount required by the bill to be paid would be the fee for one transaction, and in the case of a tax, the amount required by the bill to be paid would be the tax for one period that is in dispute.

Existing law provides for the administration of income and bank and corporation taxes. That law provides that a claim for refund shall be filed within specified timeframes if any tax has been paid or overpaid, as specified.

This bill would allow a taxpayer to make payment of taxes by making a deposit in the nature of a cash bond to stop the running of interest, as specified, and still preserve his or her right to commence an action for refund, as provided.

~~Existing unemployment insurance law provides for certain contributions by employers and employees.~~

The Employment Development Department administers unemployment insurance compensation benefits and collects

contributions, including interest and penalties, from employers to provide those benefits. Existing law permits an employer to petition for reassessment, and allows a petitioner to file a claim for refund upon the payment of the amount of the assessment, including interest and penalties, and thereafter to pursue all administrative and judicial review rights accorded.

This bill would provide that interest shall not be charged thereunder on penalties, would make related clarifying changes, and would require the Employment Development Department to report to the Legislature in connection thereto. The bill would also permit a petitioner to file a claim for refund upon the payment of that portion of the amount of the assessment, including interest and penalties for one employee for one taxable period, and thereafter to pursue all administrative and judicial review rights accorded.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act may be cited as the “Taxpayer’s
2 Rights Protection Act of 1998.”

3 SEC. 2. It is the intent of the Legislature to conform
4 state law to federal law relative to the shifting of the
5 burden of proof in connection with taxes paid by
6 California income tax taxpayers.

7 SEC. 3. Section 524 is added to the Evidence Code, to
8 read:

9 524. (a) Notwithstanding any other provision of law,
10 in any proceeding in which the State Board of
11 Equalization is a party, that board shall have the burden
12 of proof by clear and convincing evidence in sustaining
13 its assertion of penalties for intent to evade or fraud
14 against a taxpayer, with respect to any factual or legal
15 issue relevant to ascertaining the liability of a taxpayer.

16 (b) Nothing in this section shall be construed to
17 override any requirement to substantiate any item on any
18 tax return filed with the State Board of Equalization.

(c) Nothing in this section shall subject a taxpayer to unreasonable search or access to records in violation of the United States Constitution, the California Constitution, or any other law.

SEC. 4. *Section 38 is added to the Revenue and Taxation Code, to read:*

38. (a) *In the case of any fee administered by the board, a claimant may maintain a suit or proceeding in any court for the recovery of any amount alleged to have been erroneously or illegally assessed, determined, or collected upon the filing of a claim for refund or credit, and the payment of the fee for one transaction that is in dispute.*

(b) *In the case of any tax administered by the board, a claimant may maintain a suit or proceeding in any court for the recovery of any amount alleged to have been erroneously or illegally assessed, determined, or collected for one period that is in dispute upon the filing of a claim for refund or credit, and the payment of the tax for that period.*

SEC. 5. Section 7062 is added to the Revenue and Taxation Code, to read:

7062. (a) Notwithstanding any other provision of law, the board shall have the burden of proof by clear and convincing evidence in sustaining its assertion of penalties for intent to evade or fraud against a taxpayer in any court or administrative tax proceeding or in any audit, review, or evaluation of tax compliance conducted by board employees, contractors, or agents, with respect to any factual or legal issue relevant to ascertaining the liability of a taxpayer.

(b) Nothing in this section shall be construed to override any requirement of this part to substantiate any item.

(c) Nothing in this section shall subject a taxpayer to unreasonable search or access to records in violation of the United States Constitution, the California Constitution, or any other law.

~~SEC. 5.—~~

1 SEC. 6. Section 18404 is added to the Revenue and
2 Taxation Code, to read:

3 18404. (a) The Franchise Tax Board shall have the
4 burden of proof by clear and convincing evidence in
5 sustaining its assertion of penalties for intent to evade or
6 fraud against a taxpayer in any court or administrative tax
7 proceeding or in any evaluation of tax compliance
8 conducted by Franchise Tax Board employees,
9 contractors, or agents, with respect to any factual or legal
10 issue relevant to ascertaining the liability of a taxpayer.

11 (b) Nothing in this section shall be construed to
12 override any requirement of this part, Part 10
13 (commencing with Section 17001), or Part 11
14 (commencing with Section 23001) to substantiate any
15 item.

16 (c) Nothing in this section shall subject a taxpayer to
17 unreasonable search or access to records in violation of
18 the United States Constitution, California Constitution,
19 or any other law.

20 ~~SEC. 6.—~~

21 SEC. 7. Section 18405 is added to the Revenue and
22 Taxation Code, to read:

23 18405. (a) At the request of any taxpayer who files an
24 individual income tax return, the Franchise Tax Board
25 shall send to the taxpayer an itemized receipt showing a
26 proportionate allocation, in money terms, of the
27 taxpayer's total tax payments among the major
28 expenditure categories.

29 (b) For purposes of subdivision (a), total tax payments
30 of an individual for any taxable year are any tax collected
31 from individuals by the board including amounts
32 withheld by employers and remitted to the Employment
33 Development Department.

34 (c) The Legislative Analyst office shall determine the
35 percentage of General Fund expenditures for each
36 category listed in subdivision (d).

37 (d) For purposes of subdivision (a), the major
38 expenditure categories are:

39 (1) Education (kindergarten through 12th grade).

40 (2) Health and welfare.

- 1 (3) Higher education.
- 2 (4) Youth and adult corrections.
- 3 (5) Courts.
- 4 (6) Resources.
- 5 (7) Business, transportation, and housing.
- 6 (8) Tax relief.
- 7 (9) State and consumer services.
- 8 (10) Environmental protection.
- 9 (11) Other.

10 (e) A request for a tax receipt shall be made with
11 respect to any taxable year at the time of filing the return
12 for that taxable year. The Franchise Tax Board shall make
13 a receipt available to a requesting taxpayer as soon as
14 practicable upon the processing of that taxpayer's income
15 tax return.

16 (f) The Franchise Tax Board is encouraged to utilize
17 modern technologies such as electronic mail and the
18 Internet to minimize the cost of sending receipts to
19 taxpayers. The Franchise Tax Board shall establish an
20 interactive program on its Internet website to allow
21 taxpayers to generate income tax receipts on their own.

22 (g) No charge shall be imposed to cover any cost
23 associated with the production or distribution of the tax
24 receipt.

25 ~~SEC. 7.—~~

26 SEC. 8. Section 19382.5 is added to the Revenue and
27 Taxation Code, to read:

28 19382.5. (a) Notwithstanding any other provision of
29 this part, Part 10 (commencing with Section 17001), or
30 Part 11 (commencing with Section 23001), any amount
31 paid as a tax or in respect of a tax that is paid after the
32 mailing of a notice of proposed deficiency assessment and
33 designated by the taxpayer as a deposit in the nature of
34 a cash bond made to stop the running of interest, shall not
35 deprive the taxpayer of his or her rights, or the courts of
36 their jurisdiction, under Section 19382 with respect to
37 that deficiency. In such case, the amount of the cash bond
38 shall constitute an amount paid as a tax or in respect of a
39 tax only upon the expiration of the time specified in
40 Section 19049, and an action for refund may be

1 commenced under Section 19382 with respect to that
2 amount within the period otherwise specified by Section
3 19384.

4 (b) The Franchise Tax Board shall promulgate rules
5 and regulations to adopt provisions of federal Revenue
6 Procedure 84-58, 1984-2 C.B. 501, for purposes of this
7 section.

8 ~~SEC. 8.—~~

9 *SEC. 9.* Section 1113 of the Unemployment Insurance
10 Code is amended to read:

11 1113. (a) Any employer who fails to pay any
12 contributions required of him or her or of his or her
13 workers, except amounts assessed under Article 8
14 (commencing with Section 1126), within the time
15 required shall become liable for interest on those
16 contributions at the adjusted annual rate and by the
17 method established pursuant to Section 19521 of the
18 Revenue and Taxation Code from and after the date of
19 delinquency until paid.

20 (b) Interest charged under this section shall not be
21 charged on penalties charged under this article.

22 ~~SEC. 9.—~~

23 *SEC. 10.* Section 1129 of the Unemployment
24 Insurance Code is amended to read:

25 1129. The amount of each assessment, exclusive of
26 penalty, shall bear interest at the adjusted annual rate and
27 by the method established pursuant to Section 19521 of
28 the Revenue and Taxation Code from and after the last
29 day of the month following the close of the calendar
30 quarter, or from and after the 15th day of the month
31 following the close of the calendar month, for which the
32 contributions should have been returned until the date of
33 payment.

34 ~~SEC. 10.—~~

35 *SEC. 11.* Section 1178 of the Unemployment
36 Insurance Code is amended to read:

37 1178. (a) A claim for refund or credit may be filed
38 with the director for any overpayment including, but not
39 limited to, amounts paid subsequent to the filing for

1 record of a certificate under Section 1703 or the entry of
2 a judgment under Section 1815.

3 (b) No refund shall be made or credit allowed unless
4 a claim therefor is filed with the director within three
5 years from the last day of the calendar month following
6 the close of the calendar quarter for which the
7 overpayment was made or within six months after
8 assessments made under Article 8 (commencing with
9 Section 1126) of this chapter become final or within 60
10 days from the date of overpayment, whichever period
11 expires the later, but prior to the expiration of such
12 periods even though no claim is filed the director on his
13 own initiative shall make refunds pursuant to Section
14 1177 or may allow credits.

15 (c) No refund of employer or worker contributions,
16 penalties or interest shall be made or credit for worker
17 contributions allowed unless the employing unit
18 conforms, within one year after the allowance of credit or
19 approval of the claim for refund, to authorized
20 regulations with respect to the refund to workers entitled
21 thereto of any money deducted by the employing unit
22 under Section 984.

23 (d) Following a final decision denying a petition for
24 reassessment pursuant to Article 11 (commencing with
25 Section 1221), the employing unit or other person which
26 was a party to the petition may file a claim for refund
27 upon payment *of that portion* of the amount of the
28 assessment, including interest and penalties *for one*
29 *employee for one taxable period*, and thereafter may
30 pursue all administrative and judicial review rights
31 accorded in Article 11 (commencing with Section 1221)
32 and Article 12 (commencing with Section 1241).

33 (e) No refund of employer contributions paid
34 pursuant to Section 976.5 shall be made unless the
35 payment is made by an employer described in subdivision
36 (c) of Section 976.5, or the amount paid is less than or
37 exceeds the amount needed to change the employer's
38 contribution rate. Refunds permitted under this
39 subdivision shall be considered an undesignated payment

1 and allocated according to subdivision (b) of Section
2 1110.1.

3 *SEC. 12.* Sections ~~8 and 9~~ *9 and 10* are clarifications of
4 existing law. The Employment Development
5 Department shall determine the extent of overcollection
6 of interest, issue refunds of overcollected amounts, and,
7 notwithstanding Section 7550.5 of the Government Code,
8 report to the Legislature by December 31, 1999, on the
9 number of refunds to be issued and the total dollar
10 amount.

O

